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• DECEMBER 2008

Poultry growers say CN owns Illinois River Watershed

Poultry officials claim the state can't sue them because the Cherokee Nation owns water resources that are the lawsuit's focus.

By Will Chavez
Staff Writer

TAHLEQUAH, Okla. – Poultry industry officials claim a federal lawsuit filed by Oklahoma's attorney general against them should be dismissed because the Cherokee Nation, not the state, owns the water resources that are the focus of the case.

Thirteen defendants in the case of Oklahoma v. Tyson Foods filed a motion Oct. 31 claiming the suit ignores



Brenda and Charlie Slaughter of Westville, Okla., float the Illinois River. Floating is one way people enjoy the river during the summer months. (File photo)

the rights and authority of the CN, which is not a party in the case.

The motion claims the court cannot rule on the case without determining

whether Oklahoma is the proper owner or trustee of the Illinois River Watershed's natural resources, to the tribe's exclusion.

"The state's complaint overlooks the well-established fact that the federal government transferred all of the water and other natural resources within the Oklahoma portion of the IRW to the Cherokee Nation before Oklahoma became a state, and those natural resources remain the exclusive property of the Cherokee Nation today," states the motion filed in Tulsa's U.S. District Court. "Indeed, the federal courts have previously rejected Oklahoma's claims that it owns or holds in trust the waters, streambeds and associated sediments previously granted to Indian Tribes."

Principal Chief Chad Smith said the tribe's water rights are still in place, that it hasn't filed a motion to dismiss and that poultry officials would be mis-

See Poultry, A-3

Poultry

continued from front page

taken to assume tribal support of an unconditional dismissal.

"The Cherokee Nation, like the state of Oklahoma, has to protect the water quality interests within our jurisdiction. It may be a fallacy for corporations like Tyson to think that an environmental regulatory structure put in place by the Cherokee Nation would be any less rigorous than the state of Oklahoma's," he said.

Smith also said the tribe would analyze the filing and "act according."

"In the meantime, the Cherokee Nation hopes to continue working with the state on water-rights discussions so that tribal and state regulatory structures can cooperate in advancing our common interests," he said.

Edmondson said the motion's filing was a "legal gimmick" set to distract and postpone the "real issue – poultry pollution."

"Native American law is complicated and complex and we will diligently defend Oklahoma's standing to protect the natural resources inside our borders from pollution," Edmondson said. "If the defendants truly believed their standing argument, they would have filed it three years ago."

Edmondson sued 13 poultry companies in 2005, claiming that they are legally responsible for handling and disposing of poultry waste that has damaged portions of the Illinois River in Oklahoma.

Tahlequah, which is the tribe's capital, is located just north of Lake Tenkiller and the entire IRW lies within the area where the federal government set water and natural resources aside for the CN, the motion states.

"To decide the claims without the Cherokee Nation's involvement would impose state control over tribal lands, waters and biota in clear violation of the political integrity, economic security and welfare of the Cherokee Nation," the motion further states.

Even if the CN does decide to join in the lawsuit, the state cannot be a part of the case because it lacks standing, the poultry industry argued.

Smith said the water rights of the CN came into existence long before the state.

"From the time the Nation exchanged with the federal government all its land in the east with the land in northeastern Oklahoma, water rights have remained intact," he said.

The poultry industry also argues the state "has no basis to apply its nuisance, trespass, environmental or agricultural laws to the lands and natural resources belonging to Indian tribes without congressional approval."

Jackie Cunningham, director of community relations for the Poultry Community Council, said Edmondson was using natural resources that legally belong to the CN as a pawn in his politically-motivated lawsuit.

"We believe this is wrong, especially since he's trying to use these resources to win a damage award to help pay private lawyers working for him under an unlawful contingency fee agreement," Cunningham said.

According to the motion, the lawsuit "must be dismissed because Oklahoma has failed to join the Cherokee Nation as a party." If the court finds the tribe is not a required party in the case, the defendants maintain the state's claims must still be dismissed "because it lacks standing to pursue claims for injury to natural resources belonging to the Cherokee Nation."

The defendants claim the state has not proven that bacteria in the IRW are caused by the application of poultry litter rather than by other sources, including cattle manure and human septic tanks, and court records show the levels of fecal bacteria at similar levels in rivers and streams throughout the state.

"No one can deny that the Illinois River watershed is in trouble," Edmondson said. "The corporate polluters first said it was the state's problem, next they blamed it on the farmers, now they want to dump it at the feet of the Cherokee Nation."